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GARVEY SQUARE COOPERATIVE BOARD OF DIRECTORS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

HO RIM KAM,

Petitioner,

vs.

MARTIN LUTHER KING, JR.-MARCUS  
GARVEY SQUARE COOPERATIVE  
BOARD OF DIRECTORS,

Respondent.

Case No.: C 07 4414 (SBA)

**[PROPOSED] ORDER DENYING  
PETITIONER HO RIM KAM'S MOTION  
TO REMAND (28 U.S.C. § 1447)**

Date : October 16, 2007

Time : 1:00 p.m.

Location : Courtroom 3, 3<sup>rd</sup> Floor

Judge : Hon. Sandra B. Armstrong

The motion of Petitioner Ho Rim Kam for an Order remanding this case to the California Superior Court came on for hearing on October 16, 2007 before this Court with Heller Ehrman LLP appearing as attorney for Petitioner and Kaufman Dolowich & Voluck LLP appearing for Respondent.

**BACKGROUND**

Petitioner Ho Rim Kam initially filed a Verified Petition for Issuance of Peremptory Writ of Mandamus on August 6, 2007, in the California Superior Court in and for the County of San Francisco to return him to Board as a Director and Treasurer of the Martin Luther King, Jr.-Marcus Garvey Square Cooperative ("Cooperative"). Respondent Board received a copy of this

1 Petition on August 8, 2007.

2 On August 27, 2007, Respondent filed a Notice of Removal pursuant to 28 U.S.C. §  
3 1441(b). On August 31, 2007, Petitioner filed the present Motion for Remand.

4 Respondent Board opposed Petitioner's Motion to Remand on that ground that federal  
5 jurisdiction is appropriate because resolution of Petitioner's claim turns on whether, in  
6 complying with a unilateral directive issued by the United States Department of Housing and  
7 Urban Development (HUD), Respondent properly removed Petitioner from its Board of  
8 Directors.

### 9 LEGAL STANDARD

10 The federal courts have original jurisdiction of all civil actions arising under the  
11 Constitution, laws, or treaties of the United States. 28 U.S.C. §1331.

12 A defendant may remove to federal court "any civil action brought in a state court of  
13 which the district courts of the United States have original jurisdiction. 28 U.S.C. § 1441(a).

14 The removing party bears the burden of establishing that removal is proper. *Emrich v.*  
15 *Touche Ross & Co.*, 846 F.2d 1190, 1195 (9th Cir.1988).

### 16 ANALYSIS

17 Federal court jurisdiction is appropriate if resolution of a matter requires an interpretation  
18 of federal law.

19 Here, HUD declared that Petitioner was automatically removed from the Cooperative's  
20 Board of Directors because he was delinquent on his rent payments in accord with the  
21 Cooperative's Bylaws. HUD directed Respondent Board to come into compliance with its  
22 Bylaws. Acting in accordance with this directive, Respondent removed Petitioner from his  
23 position on the Board.

24 If resolution of Petitioner's claim requires an analysis of the propriety of the federal  
25 agency's basis for requiring Petitioner's removal (i.e. whether HUD's stated basis was  
26 "erroneous and unfounded" as Petitioner alleges) and whether Respondent Board is required to  
27 comply with a federal agency's directives to maintain funding for the "Cooperative", a nonprofit  
28 housing corporation which HUD subsidizes under the United States Housing Act of 1937, 42

1 USC §1437, *et. seq.*, federal jurisdiction is appropriate.

2 This Court notes that in his Declaration in support of his Application for Peremptory Writ  
3 of Mandamus, Petitioner acknowledges that Respondent Board made the decision to remove  
4 Petitioner from the Board based on a letter from Angela Corcoran, the "Acting Director of the  
5 Operations Division of the U.S. Department of Housing and Urban Development, San Francisco  
6 Regional Office", advising that specific action. Petitioner writes, "acting apparently on the  
7 erroneous statements in Ms. Corcoran's [a HUD employee's] letter...a member of the Board  
8 moved to remove me from the Board...." Petitioner's concession regarding the significance of  
9 HUD's directive belies Petitioner's argument (as articulated in Petitioner's Motion to Remand)  
10 that this dispute is merely a "question of interpretation of the [Cooperative's] by-laws and  
11 application of the California Corporations Code."

12 Accordingly, this Court finds that Respondent Board properly removed this action to  
13 federal court. Removal was appropriate because resolution of Petitioner's claim inherently turns  
14 on federal questions and implicates significant federal issues, including but not limited to: (1)  
15 HUD's authority to and the propriety of its determination that Petitioner was delinquent in  
16 carrying charges (computed pursuant to HUD guidelines); (2) HUD's authority to invoke the  
17 mandatory Cooperative Bylaw provision requiring a delinquent Director's automatic removal  
18 from Respondent Board; (3) HUD's authority to direct Respondent Board to act pursuant to the  
19 Cooperative's by-laws; and (4) Respondent Board's duty to adhere to HUD's directives.

### 20 CONCLUSION

21 Therefore, after full consideration of the moving and responding papers, the Court finds  
22 that this action arises under and/or requires interpretation of federal law. Petitioner's Motion to  
23 Remand is therefore DENIED.

24 DATED:

25  
26 \_\_\_\_\_  
27 Hon. Sandra B. Armstrong  
28 Judge of the United States District Court